

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 PETITIONER,)
7 VS) CASE NO. 5:06-HC-2219-BO
8 DONALD BRONCHEAU,)
9 RESPONDENT.)

10
11
12 STATUS CONFERENCE

13 AUGUST 30, 2010

14 HONORABLE TERRENCE BOYLE, PRESIDING
15

16 APPEARANCES:

17 MR. R. A. RENFER, JR.
18 ASSISTANT UNITED STATES ATTORNEY
19 310 NEW BERN AVENUE
RALEIGH, NC 27601
(FOR THE GOVERNMENT)

20 MR. MICHAEL D. BREDENBERG
21 ASSISTANT UNITED STATES ATTORNEY
22 310 NEW BERN AVENUE
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(FOR THE GOVERNMENT)

23 MR. EDWARD D. GRAY
24 ASSISTANT UNITED STATES ATTORNEY
25 310 NEW BERN AVENUE
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1 APPEARANCES: (CONT.)

2 MR. TOM MC NAMARA
3 FEDERAL PUBLIC DEFENDER
4 150 FAYETTEVILLE STREET
5 SUITE 450
6 RALEIGH, NC
7 (FOR THE RESPONDENT)
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25 SHARON K. KROEGER, COURT REPORTER
MACHINE SHORTHAND REPORTER, COMPUTER AIDED TRANSCRIPTION

1 THE COURT: THE ADAM WALSH DETAINEES HAVE BEEN
2 BROUGHT HERE; RIGHT? DO YOU HAVE THEM? THE MARSHAL HAS
3 THEM? BRING IN MR. BRONCHEAU, AND WE'LL OPEN THAT UP
4 FIRST.

5 MR. RENFER: GOOD AFTERNOON.

6 MR. MC NAMARA: GOOD AFTERNOON.

7 THE COURT: HAS HE EVER BEEN PHYSICALLY IN THE
8 UNITED STATES DISTRICT COURT SINCE THE DETENTION?

9 MR. RENFER: I DON'T BELIEVE SO, YOUR HONOR.

10 THE COURT: OKAY. AND HE WAS DETAINED IN LATE
11 2007?

12 MR. RENFER: YES, SIR.

13 THE COURT: OR 2006?

14 MR. RENFER: I BELIEVE IT WAS -- HERE WE GO,
15 YOUR HONOR. I HAVE IT HERE. '06, YOUR HONOR.

16 THE COURT: LATE 2006.

17 MR. RENFER: YES, YOUR HONOR.

18 THE COURT: LIKE NOVEMBER?

19 MR. MC NAMARA: DECEMBER, YOUR HONOR.

20 THE COURT: DECEMBER OF 2006?

21 MR. MC NAMARA: DECEMBER OF 2006.

22 THE COURT: AND WHAT UNITED STATES DISTRICT
23 DOES HE COME FROM FOR -- WITH HIS SENTENCE?

24 MR. MC NAMARA: I BELIEVE HE IS FROM ARIZONA.

25 THE COURT: IS THAT RIGHT? YOU MIGHT AS WELL

1 GET FAMILIAR WITH HIM BECAUSE THAT IS GOING TO BE THE
2 SEGWAY INTO THIS -- THESE HEARINGS.

3 (WHEREUPON, THE RESPONDENT ENTERED THE
4 COURTROOM.)

5 THE COURT: GOOD AFTERNOON. YOU ARE MR.
6 BRONCHEAU. IS THAT HOW YOU PRONOUNCE IT?

7 THE RESPONDENT: PARDON?

8 THE COURT: DO YOU PRONOUNCE YOUR NAME
9 BRONCHEAU?

10 THE RESPONDENT: YES.

11 MR. MC NAMARA: HE HAS A LITTLE HEARING
12 PROBLEM.

13 THE COURT: CAN YOU HEAR ME OKAY?

14 THE RESPONDENT: YES, RIGHT NOW.

15 THE COURT: OKAY. AND WHERE IS IT THAT YOU
16 ARE FROM BEFORE YOU WENT INTO PRISON?

17 THE RESPONDENT: IDAHO.

18 THE COURT: IDAHO?

19 THE RESPONDENT: YES.

20 THE COURT: IS THAT WHERE YOU WERE CONVICTED?

21 THE RESPONDENT: YES.

22 THE COURT: WERE YOU CONVICTED IN THE UNITED
23 STATES DISTRICT COURT IN IDAHO?

24 THE RESPONDENT: YES.

25 THE COURT: AND YOU WERE CONVICTED OF A CRIME

1 OF MAKING A FALSE STATEMENT UNDER 18 U.S. CODE 1001?

2 THE RESPONDENT: YES.

3 THE COURT: WHAT WAS THE FALSE STATEMENT ABOUT
4 THAT WAS THE CONVICTION?

5 THE RESPONDENT: THEY SAID I LIED ABOUT THIS
6 WOMAN I WAS WITH.

7 THE COURT: UM-HUM. WHO DO THEY SAY YOU LIED
8 TO?

9 THE RESPONDENT: PARDON?

10 THE COURT: TELL HIM WHAT I SAID.

11 MR. MC NAMARA: WHO DID THEY SAY YOU LIED TO?

12 THE RESPONDENT: THIS WOMAN. SHE IS DEAD NOW.

13 THE COURT: NO, NO. THE FBI?

14 THE RESPONDENT: THE MARSHAL.

15 THE COURT: OKAY. DO YOU KNOW ANYTHING ABOUT
16 HIS RECORD?

17 MR. MC NAMARA: I HAVE SOME INFORMATION ON HIS
18 RECORD.

19 THE COURT: DO WE HAVE HIS RECORD? DO YOU
20 HAVE LIKE A PSR OR ANYTHING LIKE THAT?

21 MR. MC NAMARA: WE HAVE NOT RECEIVED ANY
22 DISCOVERY YET, YOUR HONOR. IF FACT, WE HAVE NOT RECEIVED
23 DISCOVERY IN ANY OF THESE CASES.

24 THE COURT: YOU WERE SENTENCED TO 48 MONTHS?

25 THE RESPONDENT: YES.

1 THE COURT: AND YOU SERVED -- DID YOU GET GOOD
2 TIME, GAIN TIME?

3 THE RESPONDENT: YES.

4 THE COURT: SO YOU SERVED 42 AND A HALF
5 MONTHS?

6 THE RESPONDENT: IN CALIFORNIA.

7 THE COURT: BUT THAT IS ABOUT HOW LONG YOU
8 WERE IN PRISON?

9 THE RESPONDENT: YES.

10 THE COURT: ABOUT 42 AND A HALF MONTHS?

11 THE RESPONDENT: ABOUT THAT.

12 THE COURT: AND YOU WERE DUE TO BE RELEASED
13 FROM PRISON IN DECEMBER OF 2006 OR JANUARY OF 2007?

14 THE RESPONDENT: JANUARY, I BELIEVE.

15 THE COURT: OF 2007?

16 THE RESPONDENT: YES.

17 THE COURT: AND YOU HAD A TERM OF THREE YEARS
18 OF SUPERVISED RELEASE?

19 THE RESPONDENT: YES.

20 THE COURT: AND THAT HAS NOW EXPIRED?

21 THE RESPONDENT: PARDON?

22 THE COURT: THAT HAS RUN? THE THREE YEARS HAS
23 RUN?

24 THE RESPONDENT: YES.

25 THE COURT: BUT YOU NEVER WERE PLACED ON

1 SUPERVISED RELEASE? YOU WERE DETAINED; RIGHT?

2 THE RESPONDENT: YES.

3 THE COURT: AND YOU WERE AT A FACILITY IN
4 CALIFORNIA WHEN YOU WERE AWAITING RELEASE?

5 THE RESPONDENT: YES. THAT IS WHERE I WAS
6 SUPPOSED TO BE RELEASED FROM.

7 THE COURT: WHAT IS THE NAME OF THAT FACILITY?

8 THE RESPONDENT: ATWATER.

9 THE COURT: FCI-ATWATER?

10 THE RESPONDENT: YES.

11 THE COURT: AND INSTEAD YOU WERE TRANSPORTED
12 TO NORTH CAROLINA?

13 THE RESPONDENT: YES.

14 THE COURT: AND PLACED AT FCI-BUTNER?

15 THE RESPONDENT: YES.

16 THE COURT: OKAY. AND YOU HAVE BEEN THERE
17 EVER SINCE?

18 THE RESPONDENT: YES.

19 THE COURT: HAVE YOU BEEN OUTSIDE OF THE
20 FACILITY EVER SINCE YOU WENT THERE?

21 THE RESPONDENT: NO.

22 THE COURT: IS TODAY THE FIRST DAY YOU
23 PHYSICALLY HAVE BEEN OUTSIDE THE INSTITUTION?

24 THE RESPONDENT: AT BUTNER?

25 THE COURT: YES.

1 THE RESPONDENT: I HAVEN'T BEEN OUT YET.

2 THE COURT: NO, BUT YOU ARE OUT TODAY.

3 YOU ARE IN THE UNITED STATES DISTRICT COURT.

4 THE RESPONDENT: YES.

5 THE COURT: YOU ARE LOOKING AT ME.

6 YOU ARE LOOKING AT ME AND I AM LOOKING AT YOU; RIGHT?

7 THE RESPONDENT: RIGHT.

8 THE COURT: SO WE ARE NOT IN BUTNER?

9 I AM JUST TRYING TO GET THE FACTS. HAVE YOU BEEN OUTSIDE
10 OF THE WALLS OF BUTNER SINCE DECEMBER OF 2006?

11 THE RESPONDENT: YES. I HAVE BEEN TO
12 FCI-HOSPITAL.

13 THE COURT: WHERE IS THAT?

14 THE RESPONDENT: IT'S ABOUT -- I DON'T KNOW
15 HOW FAR IT IS. IT IS OUT OF FCI-1, ANYWAY.

16 THE COURT: WHAT DID HE SAY?

17 MR. MC NAMARA: HE SAYS FCI-1, YOUR HONOR.
18 THAT IS ON THE SAME GROUNDS.

19 THE COURT: OKAY. YOU HAVEN'T BEEN OUTSIDE OF
20 THE BUTNER COMPOUND SINCE YOU ARRIVED THERE; HAVE YOU?

21 THE RESPONDENT: NO.

22 THE COURT: UNTIL TODAY, A FEW HOURS AGO?

23 THE RESPONDENT: RIGHT.

24 THE COURT: OR YESTERDAY; CORRECT?

25 THE RESPONDENT: TODAY.

1 THE COURT: OKAY. DO YOU KNOW MUCH ABOUT HIS
2 CASE OR NOT?

3 MR. MC NAMARA: A LITTLE BIT. I HAVE TALKED
4 TO HIM PERSONALLY AT BUTNER BEFORE TODAY.

5 THE COURT: BUT I MEAN THE FACTS OF IT. IT
6 APPEARS TO ME THAT THEY MADE A PRELIMINARY CERTIFICATION
7 WHICH IS NO MORE THAN A CONCLUSORY VERIFICATION UNDER
8 OATH BY SOMEBODY WHO IS ON A CERTIFICATION REVIEW PANEL
9 SAYING THAT HE FELL WITHIN THE DEFINITION FACTUALLY OF
10 THE ADAM WALSH ACT AND SHOULD BE DETAINED, BUT THAT TIME
11 WAS RUNNING OUT ON THE DEADLINE FOR HIS ACTUAL PHYSICAL
12 RELEASE FROM CUSTODY, AND SO THEY WOULD CONDUCT A
13 FORENSIC, A FULL FORENSIC EVALUATION AT A LATER TIME.

14 MR. MC NAMARA: THAT'S CORRECT.

15 THE COURT: I AM UNAWARE OF THE FACT THAT THEY
16 HAVE ACTUALLY CONDUCTED THAT LATER EVALUATION.
17 DO YOU KNOW?

18 MR. MC NAMARA: IF THEY HAVE, I AM NOT AWARE
19 OF IT EITHER. I DO KNOW THE PRELIMINARY ONE WAS DONE.

20 THE COURT: OKAY. BUT THE PRELIMINARY ONE WAS
21 DONE UNDER EXIGENT CIRCUMSTANCES BECAUSE THEY WERE
22 UNWILLING TO RELEASE HIM AND HAVE HIM NO LONGER BE
23 FACIALLY COVERED BY THE ADAM WALSH ACT AS A TRANSITION
24 DETAINEE? TRUE?

25 MR. MC NAMARA: TRUE.

1 THE COURT: AND 2007, '08, '09, '10, WE ARE
2 THREE YEARS AND EIGHT OR NINE MONTHS POST AND HE HAS
3 NEVER HAD THE ORTHODOX FORENSIC EVALUATION TO ESTABLISH
4 THAT HE IS SUBJECT TO THE ADAM WALSH ACT AS SEXUALLY
5 DANGEROUS AND SUFFERING FROM A MAJOR MENTAL DISORDER; HAS
6 HE?

7 MR. MC NAMARA: AS FAR AS I KNOW, HE HAS NOT.

8 THE COURT: OKAY. DO YOU HAVE ANY IDEA IF HE
9 HAS A CONVICTION, HISTORICALLY, BY PROOF BEYOND A
10 REASONABLE DOUBT INVOLVING ANY SEXUAL MISBEHAVIOR?

11 MR. MC NAMARA: I HAVE NO IDEA. ALL I KNOW IS
12 WHAT IS IN THAT INITIAL CERTIFICATION.

13 THE COURT: WELL, THERE IS NOTHING IN THAT.
14 THERE IS NOTHING IN THAT THAT WOULD ESTABLISH OR
15 DISESTABLISH A PAST HISTORY OF PROOF
16 BEYOND A REASONABLE DOUBT OF SOME CRIME, FELONY OR
17 MISDEMEANOR, THAT INVOLVES SEXUAL MISBEHAVIOR; IS THERE?

18 MR. MC NAMARA: THAT IS TRUE. I DON'T KNOW.
19 WE HAVE BEEN WAITING FOR DISCOVERY. I KNOW THE U.S.
20 ATTORNEY'S OFFICE IS WORKING ON IT, BUT WE JUST DON'T
21 HAVE A LOT OF INFORMATION.

22 THE COURT: WAS HE PLACED ON SUPERVISED
23 RELEASE?

24 MR. MC NAMARA: NOT THAT I KNOW OF. I DON'T
25 THINK HE WAS.

1 THE COURT: NO ONE HAS ACTIVATED HIS
2 SUPERVISED RELEASE; HAVE THEY?

3 MR. MC NAMARA: AS FAR AS I KNOW, THEY HAVE
4 NOT.

5 THE COURT: WHEN YOU WERE -- WHAT IS THE NAME
6 OF THE FCI IN CALIFORNIA?

7 THE RESPONDENT: ATWATER.

8 THE COURT: WHERE IS THAT LOCATED? SAN
9 FRANCISCO, L.A.?

10 THE RESPONDENT: EAST OF FRESNO.

11 THE COURT: OKAY. SO IT'S IN THE DESSERT OR
12 SOMETHING LIKE THAT?

13 THE RESPONDENT: YES.

14 THE COURT: AND IS THAT A MEDIUM, A LOW? IS
15 IT A CAMP? IS IT HIGH? WHAT IS IT?

16 THE RESPONDENT: IT'S A HIGH.

17 THE COURT: IT'S A HIGH. IT'S A PENITENTIARY
18 OR BELOW PENITENTIARY?

19 THE RESPONDENT: IT'S A PENITENTIARY.

20 THE COURT: WHY WERE YOU HOUSED THERE?

21 THE RESPONDENT: THAT IS WHERE THEY SENT ME
22 FROM OKLAHOMA CITY.

23 THE COURT: HMM?

24 THE RESPONDENT: THAT IS WHERE THEY SENT ME
25 FROM OKLAHOMA CITY.

1 THE COURT: WHAT DOES OKLAHOMA CITY HAVE TO DO
2 WITH THIS?

3 THE RESPONDENT: THAT IS A HOLD OVER.
4 EVERYBODY HAS TO GO.

5 THE COURT: OKAY. ALL RIGHT. WHAT HAS HE
6 FILED? JUDGE BRITT ENTERED AN ORDER IN AUGUST LIFTING
7 THE STAY, AND I BELIEVE IN EACH AND EVERY ONE OF THESE
8 CASES AND IN EFFECT SAYING THAT TO THE EXTENT YOU HAVE
9 MOTIONS OR OTHER CHALLENGES, CONSTITUTIONAL OR FACTUAL,
10 THEY ARE PERMITTED TO COME BACK INTO BEING.

11 MR. MC NAMARA: YES, SIR. WE DID FILE -- DID
12 WE NOT FILE A MOTION TO DISMISS? WE FILED A MOTION TO
13 DISMISS IN HIS AND ALL THE CASES EXCEPT THE ONES THAT
14 WANTED HEARINGS IMMEDIATELY AFTER JUDGE BRITT LIFTED THE
15 STAY A FEW MONTHS AGO.

16 THE COURT: DON'T YOU THINK I OUGHT TO DISMISS
17 THIS CASE? THE GOVERNMENT?

18 I MEAN, IT SOUNDS LIKE IT'S AN ABSOLUTE
19 INEFFECTIVE MESS FROM THE GOVERNMENT'S STANDPOINT, AND
20 YOU SHOULD BE EMBARRASSED TO BE HERE ON THESE FACTS.

21 MR. RENFER: WELL, YOUR HONOR, FIRST OF ALL,
22 AS THE COURT ELICITED, THERE WAS AN INITIAL
23 CERTIFICATION.

24 THE COURT: WHICH IS INADEQUATE UNDER THE ACT;
25 ISN'T IT?

1 MR. RENFER: I DON'T BELIEVE SO, YOUR HONOR.
2 IT'S THE BASIS ON WHICH YOU CAN -- WE CAN HOLD THEM AND
3 JUDGE BRITT DID ORDER THE FULL FORENSIC EVALUATION AND IT
4 WAS DONE.

5 THE COURT: BUT THAT HAS NEVER BEEN DONE.

6 MR. RENFER: YES, SIR, IT HAS BEEN DONE.

7 THE COURT: HAS IT BEEN FILED?

8 MR. RENFER: NO, SIR, IT HAS NOT.

9 THE COURT: WELL, THEN WHO WOULD KNOW ABOUT
10 IT?

11 MR. RENFER: WELL, OBVIOUSLY -- BY THE WAY,
12 BEFORE I GET TO THAT, I WILL ANSWER THAT, BUT MR.
13 BRONCHEAU REFUSED TO PARTICIPATE IN IT AS WELL, SO IT IS
14 COMPLETE TO THE DEGREE, UP TO THE DEGREE IT CAN BE ABSENT
15 HIS COOPERATION.

16 THE COURT: WELL, WHY SHOULD HE PARTICIPATE IN
17 IT IF HE BELIEVES HE IS BEING UNCONSTITUTIONALLY AND
18 ILLEGALLY HELD?

19 MR. RENFER: WELL, AGAIN, THAT IS A CHOICE
20 THAT HE NEEDS TO MAKE BASED UPON ADVICE OF COUNSEL AND
21 HIS OWN DETERMINATION.

22 THE COURT: RIGHT.

23 MR. RENFER: THAT'S CORRECT. SURE.

24 THE COURT: I, MEAN IT WAS AT A TIME WHEN
25 COMSTOCK WAS -- HELD THE LAW TO BE UNCONSTITUTIONAL AND

1 THE FOURTH CIRCUIT HAD HELD THE LAW TO BE
2 UNCONSTITUTIONAL.

3 MR. RENFER: I AM NOT SURE THAT THE FOURTH
4 CIRCUIT HAD HELD IT TO BE UNCONSTITUTIONAL AT THE TIME
5 THAT HE REFUSED, YOUR HONOR, BUT I UNDERSTAND ON THE
6 ADVICE OF COUNSEL THAT HE DID REFUSE, BUT YOU ARE
7 CORRECT, THE FOURTH CIRCUIT ULTIMATELY HELD IT WAS
8 UNCONSTITUTIONAL, AND SO YOU ARE RIGHT. I MEAN, BUT IT
9 HAS BEEN DONE TO THE DEGREE IT CAN BE DONE.

10 THE COURT: AND THERE IS NO -- THE DOCUMENTS
11 THAT I HAVE DON'T PROVIDE ANY FORECAST OF FACTS ABOUT MR.
12 BRONCHEAU. IT JUST SAYS THE DIRECTOR HAS DELEGATED THIS,
13 AND BASED ON A REVIEW OF HIS BUREAU OF RECORDS, I CERTIFY
14 HE IS SEXUALLY DANGEROUS. ALL THE OTHERS HAVE GOT
15 FACTUAL ALLEGATIONS OR FORECAST AS TO WHAT KIND OF
16 BEHAVIOR THE PERSON ENGAGED IN.

17 MR. RENFER: I SEE THE DOCUMENT THAT YOU ARE
18 READING FROM, YOUR HONOR. I CAN ALSO SAY THAT --

19 THE COURT: AM I MISSING SOMETHING?

20 MR. RENFER: EXCUSE ME?

21 THE COURT: AM I MISSING SOMETHING?

22 MR. RENFER: WELL, YOU ARE MISSING ALL OF THE
23 FACTUAL UNDERPINNINGS OF THE CERTIFICATION AND THE
24 COMMITMENT --

25 THE COURT: WELL, WHO HAS THOSE?

1 MR. RENFER: -- THAT WOULD BE BROUGHT OUT IN A
2 TRIAL OF THE CASE, YOUR HONOR. SURE, YOU ARE MISSING
3 THAT.

4 THE COURT: WELL, NO, BUT IN ALL THE OTHER
5 CASES, THE OTHER FOUR HERE TODAY, YOU HAVE MADE FACTUAL
6 FORECASTS OF WHAT KIND OF BEHAVIOR THEY ENGAGED IN AND
7 WERE EITHER CONVICTED OF OR WAS DOCUMENTED, BUT THERE IS
8 NOTHING ABOUT HIM.

9 MR. RENFER: I UNDERSTAND YOUR CONCERN, YOUR
10 HONOR, AND ALL I AM SAYING IS WE HAVE THE RECORDS. YOU
11 WERE ASKING ABOUT PRIOR SEXUAL OFFENSES. WE HAVE THE
12 DOCUMENTATION THAT WILL BE PRODUCED IN DISCOVERY AND THAT
13 WAS AVAILABLE FOR THE CERTIFICATION REVIEW PANEL THAT
14 THEY EVALUATED, AND BASED UPON THIS -- AND IF THEY DID
15 NOT ARTICULATE SUFFICIENTLY, I UNDERSTAND THE CONCERN.

16 THE FACTUAL BASIS IS THERE AND THAT IS WHAT
17 THE STATUTE REQUIRES THAT THE REVIEW PANEL SET FORTH,
18 THAT THEY HAVE MADE THESE FINDINGS. I DON'T THINK THE
19 STATUTE REQUIRES THAT THEY MAKE A PARTICULARIZED FACTUAL
20 UNDERTAKING.

21 THE COURT: YOU DON'T THINK THAT DUE PROCESS
22 REQUIRES YOU TO SAY WHAT IT IS YOU ARE BEING HELD FOR. I
23 MEAN, YOU COULDN'T JUST PICK SOMEBODY UP AND SAY I THINK
24 WE NEED TO HANG ON TO YOU, YOU LOOK LIKE TROUBLE.

25 MR. RENFER: I UNDERSTAND THAT. THAT IS SOME

1 OF THE ISSUES THAT WERE IN THE FOURTH CIRCUIT AND WERE
2 ARTICULATED BEFORE THE SUPREME COURT, THE SAME TYPE OF
3 QUESTION, YOUR HONOR.

4 THE COURT: NO, THAT WASN'T IN FRONT OF THE
5 SUPREME COURT. THE SUPREME COURT DIDN'T RULE ON ANY OF
6 THAT.

7 MR. RENFER: I AM SORRY. THE QUESTIONS WERE
8 PROPOUNDED LIKE THAT.

9 THE COURT: BUT THEY DIDN'T RULE ON ANY OF
10 THAT.

11 MR. RENFER: I UNDERSTAND THAT.

12 THE COURT: SO YOUR POSITION HERE TODAY IS
13 THAT THE PRELIMINARY CERTIFICATION IS SUFFICIENT UNDER
14 THE LAW AND THAT YOU CAN MAINTAIN THIS ACTION.

15 MR. RENFER: YES, SIR.

16 THE COURT: OKAY. AS TO HIM?

17 MR. RENFER: YES, SIR.

18 THE COURT: OKAY. ALL RIGHT. WELL, I DON'T
19 THINK THAT IS ENOUGH. SO I MAY JUST DISMISS HIS CASE ON
20 THAT GROUND. BUT I WILL TAKE IT UNDER ADVISEMENT. I
21 DON'T THINK YOU CAN JUST SAY, WE LOOKED AT THIS FELLOW'S
22 BACKGROUND AND RECORDS AND HE IS SEXUALLY DANGEROUS AND
23 SUFFERING FROM A MAJOR MENTAL DISORDER WITHOUT SAYING
24 WHAT IT IS.

25 MR. RENFER: I UNDERSTAND THE COURT'S CONCERN

1 AND I DO APPRECIATE THE FACT THAT YOU WILL ISSUE AN
2 ORDER. I WOULD REQUEST, YOUR HONOR, THAT IF YOU DISMISS,
3 THAT YOU STAY THE ORDER PENDING REVIEW, APPELLATE REVIEW,
4 AND IF YOU DO NOT DESIRE TO STAY IT PENDING APPELLATE
5 REVIEW, THAT YOU STAY IT AS FAR AS FOR A SUFFICIENT
6 AMOUNT OF TIME FOR US TO SEEK A FOURTH CIRCUIT STAY.

7 THE COURT: OKAY.

8 MR. RENFER: THANK YOU.

9 THE COURT: THANK YOU. DOES HE HAVE A 2241
10 PENDING, ALSO?

11 MR. MC NAMARA: I DON'T BELIEVE HE DOES, YOUR
12 HONOR. SOME DO, BUT HE DOESN'T.

13 THE COURT: NOW, YOU DON'T APPEAR IN ANY OF
14 THE 2241'S, YOUR OFFICE?

15 MR. MC NAMARA: NO, YOUR HONOR.

16 THE COURT: THAT IS OUTSIDE THE SCOPE OF YOUR
17 REPRESENTATION.

18 MR. MC NAMARA: THAT'S CORRECT.

19 THE COURT: DO YOU -- HOW MANY OF THESE 22 --
20 I MEAN 4248S ARE YOU APPEARING IN THAT I HAVE?
21 DO YOU KNOW?

22 MR. MC NAMARA: I AM NOT EXACTLY SURE HOW MANY
23 YOU HAVE. WE STARTED WITH 95.

24 THE COURT: I THINK I HAVE 23 OR SO OF THE
25 4248S.

1 MR. MC NAMARA: 13, 15 OF THEM HAVE GONE TO
2 THE PANEL.

3 THE COURT: SO YOU JUST DON'T KNOW. THERE IS
4 NO WAY FOR YOU TO KNOW HOW MANY I HAVE?

5 MR. MC NAMARA: NO, YOUR HONOR. WELL, I MEAN,
6 I CAN CHECK. I JUST DON'T KNOW.

7 THE COURT: I AM WONDERING IF FROM A
8 STANDPOINT OF JUDICIAL ECONOMY, WHERE ALL OF THE LEGAL
9 QUESTIONS ARE GOING TO BE THE SAME, IF IT WOULDN'T BE
10 EFFICIENT TO HAVE A CLASS OF PEOPLE WHO ARE DETAINEES AND
11 WHO ARE ASSIGNED TO THIS JUDGE IN THIS COURT AND TO HAVE
12 THE RULING IN TIMMS APPLY WITH EQUAL FORCE TO THEM.

13 I DON'T KNOW THAT THERE IS ANYTHING IN TIMMS
14 THAT IS NOT CHARACTERISTIC OF THE OTHER DETAINEES. SOME
15 HAVE SIMPLY BEEN IN LONGER THAN OTHERS, BUT THE
16 CONDITIONS OF CONFINEMENT AND THE PROCEDURES ENFORCED ARE
17 ALL CONSISTENT.

18 MR. MC NAMARA: THEY ARE.

19 THE COURT: AND IRRESPECTIVE OF THE RULING,
20 THEY ARE ALL GOING TO BE APPEALED AND THEY ARE ALL GOING
21 TO HAVE TO GO THROUGH THE PROCESS OF BEING WORKED OUT
22 THROUGH THE APPELLATE COURT SYSTEM, EITHER ON THE LAW OR
23 ON THE FACTS OR ON BOTH. I MEAN, AND IT SUGGESTS AN
24 AWFULLY LONG PERIOD OF TIME INTO THE FUTURE.

25 MR. MC NAMARA: IT DOES.

1 THE COURT: I DON'T SEE ANY BRIGHT LIGHT OF A
2 WAY TO BRING THESE CASES TO RESOLUTION. IT'S NOT LIKE A
3 PLEA. YOU CAN'T PLEAD TO IT AND GET A LIMITED SENTENCE.
4 AND PRETTY SOON PEOPLE ARE GOING TO BE IN A SITUATION --
5 WELL, NOBODY HAS HAD THEIR FIRST HEARING YET. WE HAVE
6 NOT IN THIS DISTRICT HAD A SINGLE HEARING ON THE MERITS;
7 HAVE WE?

8 MR. MC NAMARA: NO, YOUR HONOR.

9 THE COURT: AND IF YOU HAD YOUR FIRST HEARING,
10 THEN SIX MONTHS LATER YOU ARE ENTITLED TO YOUR SECOND
11 HEARING IF YOU WANT IT; RIGHT?

12 MR. MC NAMARA: THAT'S CORRECT. I DO KNOW ALL
13 OF YOUR CASES EXCEPT FOR A FEW THAT HAVE ASKED FOR
14 IMMEDIATE HEARINGS HAVE MOTIONS TO DISMISS PENDING. THE
15 ONES THAT -- I WOULD GUESS OF YOUR CASES, MAYBE FOUR OR
16 FIVE OR SIX WANT IMMEDIATE HEARINGS, AND THEY DID NOT
17 WANT US TO FILE MOTIONS TO DISMISS FOR THEM. THE OTHERS
18 HAVE THEM.

19 THE COURT: WELL, DO YOU HAVE ANYTHING MORE
20 YOU WANT TO -- I MEAN, DOES HE HAVE ANY CONVICTIONS OF --
21 FOR SEXUAL MISCONDUCT?

22 MR. MC NAMARA: I THINK HE DOES, YOUR HONOR.

23 THE COURT: HISTORICAL?

24 MR. MC NAMARA: HISTORICAL.

25 THE COURT: IN FEDERAL COURT, IN STATE COURT?

1 MR. MC NAMARA: I AM NOT SURE WHERE, BUT I
2 REMEMBER TALKING TO HIM. YOU KNOW, THERE ARE SO MANY OF
3 THEM, AND WHEN YOU TALK TO THEM, IT TENDS TO RUN
4 TOGETHER, BUT I WOULD SAY HE DOES HAVE CONVICTIONS
5 SOMEPLACE.

6 THE COURT: YES. UM-HUM.

7 MR. RENFER: YOUR HONOR, ONE POINT. YOU
8 MENTIONED THAT YOU ARE GOING TO ISSUE AN ORDER ON THIS.
9 SINCE I DON'T BELIEVE THE ISSUE THAT YOU HAVE ARTICULATED
10 AND UPON WHICH IT APPEARS THAT YOU ARE GOING TO RENDER A
11 DECISION, I DON'T BELIEVE THAT ISSUE HAS YET REALLY BEEN
12 PRESENTED TO THE COURT AND BRIEFED.

13 THE COURT: WHAT ISSUE IS THAT? ABOUT THE
14 PRELIMINARY CERTIFICATION?

15 MR. RENFER: YES, SIR.

16 THE COURT: OKAY. YOU CAN BRIEF IT. I WON'T
17 FIRE AN ORDER OFF. I HAVEN'T DECIDED WHAT TO DO. THE
18 REASON WE ARE HAVING THESE MEETINGS TODAY IS TO TRY TO
19 PROBE INTO THESE CASES WHICH HAVE BEEN SITTING HERE FOR
20 YEARS --

21 MR. RENFER: SURE.

22 THE COURT: -- WITH NO ACTIVITY, AND THAT IS
23 INAPPROPRIATE.

24 MR. RENFER: I GUESS MY QUESTION TO YOU IS,
25 THE NORMAL PROCEDURE WOULD BE FOR THE RESPONDENT'S

1 COUNSEL TO FILE A MOTION PURSUANT -- ON THIS ISSUE, AND
2 US TO RESPOND. I WOULD JUST LIKE SOME CLARIFICATION SO
3 THAT WE DON'T INAPPROPRIATELY GO AND BRIEF A POINT THAT
4 IS NOT BEFORE THE COURT.

5 THE COURT: YES. WELL, I MEAN, EMBEDDED IN
6 ALL OF THIS IS IF YOU FILE A CERTIFICATE AND SAY WE HAVE
7 DONE A FORENSIC EVALUATION IN COMPLIANCE WITH THE
8 STATUTE, AND HERE IS, YOU KNOW, THE CONCLUSIONS AND
9 OPINIONS OF OUR PSYCHOLOGIST, I MEAN, THE LAWYER ON THE
10 OTHER SIDE MIGHT JUST SAY, I OBJECT TO THE ADMISSION OF
11 THAT. WHY? BECAUSE IT'S NOT GROUNDED IN ANY KNOWN
12 SCIENCE. OKAY. AND THAT SOUNDS TRUE TO ME.

13 AND SO, YOU KNOW, CAN A PSYCHOLOGIST MAKE
14 THESE DECISIONS? IS THERE A FIELD OF MEDICINE THAT IS
15 RECOGNIZED AND ACCEPTED GENERALLY IN THE LEGAL COMMUNITY
16 THAT SAYS YOU CAN PREDICT FUTURE BEHAVIOR, THAT YOU CAN,
17 YOU KNOW, BASED ON A HISTORICAL RECORD, HAVE AN OPINION
18 ABOUT SEXUAL DANGEROUSNESS, MAJOR MEDICAL DISORDER,
19 THINGS THAT ARE USED IN THE LAW, BUT MAY OR MAY NOT BE
20 CLEARLY UNDERSTOOD IN THE LAW.

21 SO, THERE IS NO LIMIT TO THE NUMBER OF
22 PROBLEMS THAT COULD COME UP IN HANDLING ONE OF THESE
23 CASES.

24 MR. RENFER: I GUESS MY POINT COMES BACK TO ON
25 THE ISSUE OF THE ADEQUACY OF THE CERTIFICATION. IN THIS

1 CASE, YOUR HONOR, IF COUNSEL WOULD FILE A MOTION
2 CHALLENGING THAT, WE WOULD APPROPRIATELY RESPOND.

3 THE COURT: OKAY. ALL RIGHT. YES. SO
4 YOU ARE SAYING BASICALLY THAT THERE IS NOTHING IN FRONT
5 OF THE COURT AND THE COURT SHOULDN'T ACT ON NOTHING.

6 MR. RENFER: THAT IS CORRECT, YOUR HONOR.

7 MR. MC NAMARA: WE WILL FILE A MOTION, YOUR
8 HONOR.

9 THE COURT: YOU CAN DO WHATEVER YOU WANT, BUT,
10 YOU KNOW, ONE TRAIN OF THOUGHT WOULD BE WHAT I JUST SAID,
11 THAT THIS PRELIMINARY CERTIFICATION IS A PRELIMINARY
12 CERTIFICATION OF NOTHING BECAUSE THEY ARE CERTIFYING
13 SOMETHING THAT IS INCAPABLE OF BEING CERTIFIED.

14 I MEAN, I DON'T KNOW. YOU HAVE HAD SEVERAL
15 YEARS TO FIGURE THIS OUT. AND I AM JUST DISTURBED THAT
16 WE ARE GOING TO BE HERE, IF WE ARE ALL ALIVE, FOR THREE
17 OR FOUR YEARS FROM NOW AND BE MARKING THE SAME TIME. IT
18 SHOULDN'T BE THAT WAY. I DON'T THINK IT'S INTENDED TO BE
19 THAT WAY.

20 DO YOU WANT TO SAY ANYTHING MORE ABOUT HIS
21 CASE?

22 MR. MC NAMARA: NO, YOUR HONOR. BUT WE'LL GO
23 AHEAD AND FILE A MOTION AS QUICKLY AS POSSIBLE ON THAT
24 ISSUE.

25 THE COURT: YOU CAN DO WHATEVER YOU WANT, AND

1 I WILL JUST PAY ATTENTION TO WHAT IS IN THE FILE AND NO
2 ONE WAS REQUIRED TO COME HERE TODAY TO DEFEND A MOTION OR
3 BE DEALT WITH SUMMARILY. THIS WAS A STATUS CONFERENCE,
4 AND I THINK IT'S INTENDED TO BE A CONSTRUCTIVE
5 OPPORTUNITY TO MAKE PROGRESS WITH THE CASE, HOWEVER IT'S
6 GOING TO BE -- OKAY.

7 (WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)
8
9

10 CERTIFICATE
11

12 THIS IS TO CERTIFY THAT THE FOREGOING
13 TRANSCRIPT OF PROCEEDINGS TAKEN IN THE UNITED STATES
14 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF
15 THE SHORTHAND NOTES OF THE PROCEEDINGS TAKEN BY ME IN
16 MACHINE SHORTHAND AND TRANSCRIBED BY COMPUTER UNDER MY
17 SUPERVISION.

18 DATED THIS 30TH DAY OF SEPTEMBER, 2010.
19

20 /S/ SHARON K. KROEGER
21 COURT REPORTER
22
23
24
25